The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BENNETT HASELTON, an individual; PEACEFIRE, INC., a Washington Corporation, Plaintiffs, v. VALUECLICK, INC., a California corporation; JOHN DOES, I-XX, Defendants.	NO. 2:07-cv-00387-JLR VALUECLICK, INC.'S ANSWER AND AFFIRMATIVE DEFENSES

Defendant VALUECLICK, INC. ("ValueClick"), for its answer to plaintiffs' Complaint for Damages (the "Complaint") [dkt. no. 1], alleges as follows:

I. ANSWER

ANSWER TO SECTION I: PARTIES

1.1 In answer to the averments contained in ¶ 1.1 of the Complaint, ValueClick states that it is without knowledge or information sufficient to form a belief as to Bennett Haselton's residence, his ownership of personal e-mail accounts, or the state of registration of e-mail accounts Mr. Haselton purportedly owns. Notwithstanding the foregoing, and in further answer to the averments in ¶ 1.1 of the Complaint, ValueClick denies that Mr. Haselton is himself an interactive computer service or an internet access services, as those

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terms are defined by the pertinent statutes in this matter. To the extent not already answered by the foregoing, ValueClick denies all remaining averments in ¶ 1.1 of the Complaint.

1.2 In answer to the averments contained in ¶ 1.2 of the Complaint, ValueClick states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained therein. Accordingly, ValueClick denies the averments in ¶ 1.2 of the Complaint.

1.3 Paragraph 1.3 of the Complaint does not contain any averments to which an answer is required.

1.4 The averments contained in ¶ 1.4 are hopelessly vague and overbroad. ValueClick denies the averments in ¶ 1.4, except to the extent otherwise admitted below.

1.5 In further answer to Section I of the Complaint, ValueClick notes there are no averments whatsoever regarding ValueClick or its business.

ANSWER TO SECTION II: JURISDICTION

2.1 In answer to the averments contained in ¶ 2.1 of the Complaint, ValueClick is without knowledge or information sufficient to form a belief as to the truth or falsity of plaintiffs' claims that "Plaintiff [sic] and Defendants are residents of different states." For starters, by use of the plural Defendants, plaintiffs appear to be including the various John Does. Without information concerning those unidentified parties, neither ValueClick nor anyone can verify the accuracy of plaintiffs' averment. With respect to all other averments contained in ¶ 2.1 of the Complaint, ValueClick denies those averments and expressly disputes that it committed "unlawful actions" in any state.

2.2 ValueClick denies the averments contained in ¶ 2.2 of the Complaint.

2.3 In answer to the averments contained in ¶ 2.3 of the Complaint, ValueClick admits this Court has original jurisdiction over causes of action brought under the CAN-SPAM Act, but denies the purported basis for jurisdiction stated in ¶ 2.3 of the Complaint.

2.4 The statements contained in ¶ 2.4 of the Complaint are not averments to

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which an answer is required. Plaintiffs' causes of action are what they are. ValueClick denies having violated any state or federal statute that forms the basis of plaintiffs' claims.

2.5 The statements contained in ¶ 2.5 of the Complaint are conclusions of law to which no answer is required. Notwithstanding that, ValueClick admits this Court has original jurisdiction to hear this matter.

ANSWER TO SECTION III: GENERAL ALLEGATIONS

3.1 ValueClick is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in ¶ 3.1 of the Complaint and therefore denies the same.

3.2 ValueClick denies the averments contained in ¶ 3.2 of the Complaint.

3.3 ValueClick is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in ¶ 3.3 of the Complaint and therefore denies the same.

3.4 In answer to the averments contained in ¶ 3.4 of the Complaint, ValueClick is without knowledge or information sufficient to form a belief as to the truth or falsity of whether and to what extent plaintiff Haselton purportedly makes use of services provided by peacefire.org, but ValueClick expressly denies that peacefire.org is an interactive computer services.

3.5 The averments contained in ¶ 3.5 of the Complaint are unintelligible as ValueClick cannot decipher what domains plaintiffs are referring to other than the single domain: peacefire.org. In any event, ValueClick denies the averments that information regarding a particular e-mail user's state of registration "was and is available upon request."

3.6 In answer to the averments contained in ¶ 3.6 of the Complaint, ValueClick admits only that its subsidiaries and/or publishers send e-mails to persons who have affirmatively indicated their desire to receive those e-mails. ValueClick is without knowledge or information, at this point, as to whether e-mails were directed to any of the

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identified recipient addresses after obtaining the consent of the user. ValueClick denies, however, the existence of an interactive computer service or the sending of e-mails to any account with having first obtained consent of the user.

3.7 The averments contained in ¶ 3.7 of the Complaint are unintelligible for various reasons. First, ValueClick does not know what domains plaintiffs are referring to beyond the single domain identified: peacefire.org. Second, ValueClick has no idea who "Plaintiff Abbey's" is in the context of this lawsuit and suspects it is a carryover from one of the many form complaints filed in electronic mail strike suits. ValueClick denies all averments in ¶ 3.7 of the Complaint that a particular e-mail user's state of registration "was and is available upon request."

3.8 The averments contained in ¶ 3.8 of the Complaint are unintelligible with respect to plaintiffs' reference to "domains" beyond the single identified domain: peacefire.org. Notwithstanding the foregoing, ValueClick is without knowledge or information sufficient to form a belief as to the truth or falsity of whether plaintiffs received e-mails at the single identified domain and therefore denies the same.

3.9 The averments contained in ¶ 3.9 of the Complaint are unintelligible with respect to plaintiffs' reference to "domains" beyond the single identified domain: peacefire.org. Notwithstanding the foregoing, ValueClick is without knowledge or information sufficient to form a belief as to the truth or falsity of whether plaintiffs received e-mails at the single identified domain or on the single individual e-mail account identified: bhas@speakeasy.net. Accordingly, ValueClick denies the averments in ¶ 3.9.

3.10 ValueClick denies the averments in ¶ 3.10 of the Complaint, to the extent those averments are intended to relate to e-mails purportedly transmitted by ValueClick.

3.11 ValueClick denies the averments contained in ¶ 3.11 of the Complaint.

3.12 In answer to the averments contained in ¶ 3.12, ValueClick admits only that its subsidiaries and/or publishers send e-mails to persons who have affirmatively indicated

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their desire to receive those e-mails. ValueClick is without knowledge or information, at this point, as to whether e-mails were directed to any of the identified recipient addresses after obtaining the consent of the user. ValueClick denies having initiated the transmission of any e-mail in violation of state or federal law or having conspired with others to send any e-mail in violation of state or federal law.

3.13 ValueClick denies the averments contained in ¶ 3.13.

ANSWER TO SECTION IV: FIRST CAUSE OF ACTION (CAN-SPAM ACT)

ValueClick incorporates its answers from ¶ 1.1 through 3.13, above, as though fully set forth herein.

4.1 ValueClick denies the averments contained in ¶ 4.1 of the Complaint.

4.1.1 ValueClick denies the averments contained in ¶ 4.1.1 of the Complaint.

ANSWER TO SECTION V: SECOND CAUSE OF ACTION (CEMA)

ValueClick incorporates its answers from ¶ 1.1 through 3.13, above, as though fully set forth herein.

4.2 ValueClick denies the averments contained in ¶ 4.2 of the Complaint.

ANSWER TO SECTION VI: THIRD CAUSE OF ACTION (CPA)

4.3 ValueClick denies the averments contained in ¶ 4.3 of the Complaint.

5. In further answer to the averments in the Complaint, ValueClick states that plaintiffs' jury demand requires no answer and ValueClick denies any averments of fact that might be contained in the Complaint's "Prayer for Relief."

AFFIRMATIVE DEFENSES

Defendant ValueClick, for its affirmative defenses, alleges as follows:

5. Failure to State a Claim. Plaintiffs have failed to state a claim upon which relief may be granted.

6. Subscription. Plaintiffs subscribed to receive the e-mails on which plaintiffs base their Complaint.

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7. Consent. Plaintiffs consented to receive the e-mails complained of in their Complaint in exchange for valuable consideration.

8. Mitigation. Plaintiffs have failed to mitigate their damages.

9. Failure to Unsubscribe. Plaintiffs failed to follow the unsubscribe feature contained with each e-mail, inviting further purported injury.

10. Ratification. Plaintiffs ratified the actions complained of in the Complaint by failing to take any action to limit its purported damages for a period of more than two years.

11. Estoppel. Plaintiffs should be estopped from recovery by failing to take reasonable steps to protect themselves and by invited further purported injury.

12. Unclean Hands. Plaintiffs are barred from recovery by reason of their own unclean hands.

13. Acts of Another. The injuries complained of, if any, were caused by the unsanctioned conduct of others aside and apart from ValueClick.

14. Due Care. Plaintiffs failed to take reasonable steps to protect themselves or to expend modest sums to prevent the receipt of unwanted e-mails.

15. Lack of Knowledge. To the extent any of the acts complained of in the Complaint violate CAN-SPAM or any other statute, those acts were undertaken without the actual knowledge or imputed knowledge of ValueClick.

16. ValueClick believes other affirmative defenses may come to light after discovery unfolds in this case. Accordingly, ValueClick requests the Court's permission to amend these affirmative defenses upon the discovery of new information.

PRAYER FOR RELIEF

ValueClick requests the following relief from this Court:

A. Dismissal of the Complaint with prejudice;

B. An award of attorneys' fees and costs where warranted; and

C. Any other relief the Court deems just and equitable.

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RESPECTFULLY SUBMITTED this 19th day of June, 2007.

PETERSON YOUNG PUTRA, P.S.

s/ Anthony A. Todaro
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CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2007, I attempted several times to file ValueClick, Inc.'s Answer and Affirmative Defenses but was unable to due to the Court's ECF website's failure to launch. Accordingly, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system when next available (June 20), and that system sent notification of such filing to the following:

Attorney for Plaintiffs:

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Dated: June 20, 2007

s/ Cindy Lin
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